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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NO.25430 OF 2016

AND

W.M.P.NO.21756 OF 2016

D.K.Megavarnan

... Petitioner

Versus

1. The Assistant Director of Handloom & Textiles,
No.426, Bhavani Main Road,
Ashokapuram, Erode.

2. The Public Information Officer,
E.H.75, Thiruvalluvar Weavers Coop,
Production and sales Society,
Sakthi Bhavani Road, Dharmapuri,
Salangalayam Post - 638 455.

3. N.Selvaraj

... Respondents

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, forbearing the respondents 1 and 2 from furnishing the information relating to the members of the 2nd respondent society to the 3rd respondent.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.L.P.Shanmugasundaram
For R2

Mr.K.Gangadaran (for R3)

O R D E R

This writ petition has been filed seeking to issue a Writ of Mandamus to forbear the respondents 1 and 2 from furnishing the information relating to the members of the 2nd respondent society to the 3rd respondent.



2. The petitioner is one of the members of E.H.75, Thiruvalluvar Weavers Cooperative Production and Sales Society, Sakthi Bhavani Road, Dharmapuri, Salangapalayam. According to the petitioner, the 3rd respondent is always threatening the officials and other members of the said society to extract money. In this connection, the third respondent made an application under the Right to Information Act, seeking personal information of the members of the said society. On the basis of such application, the first respondent instructed the 2nd respondent to furnish the personal information of the members to the 3rd respondent and the 2nd respondent is also taking steps to furnish the same to the 3rd respondent. Aggrieved by such action of the second respondent, the petitioner is before this Court by filing the present Writ Petition with the aforesaid relief.

3. The learned counsel for the petitioner submitted that the Apex Court as well as this Court time and again held that the Cooperative Society will not come within the purview of the Right to Information Act and therefore, the first respondent ought not to have directed the second respondent to furnish the information relating to the members of the petitioner society. In support of his contention, the learned counsel relied on the Judgment of this Court in W.A.Nos.2425 to 2428 and 2500 of 2013, dated 21.04.2015 wherein the Division Bench of this Court has held as follows:

"6. In the case of Thalappalam Ser. Coop., Bank Ltd., and Others, (supra), appeals were filed by Co-operative societies and the question which fell for consideration before the Hon'ble Supreme Court was whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969, will fall within the definition of "public authority" under Section 2(h) of the RTI Act and be bound by the obligations to provide information sought for by a citizen under the RTI Act. On behalf of the Co-operative Societies, it was contended that the societies are not statutory bodies and are not performing any public functions and will not come within the expression "State" within the meaning under Article 12 of the Constitution of India. The State of Kerala sought to sustain the circular issued by the Registrar of Co-operative Societies by contending that the Registrar has got all pervasive control over the societies with power to supersede the management of the society and to appoint an Administrator and this would indicate that though the societies are body corporates, they are under the statutory



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control of Registrar of Co-operative Societies. Before the Hon'ble Supreme Court, the Co-operative Societies registered under the provisions of the Kerala Act, which are owned, controlled or substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State Legislature, were not subject matter of consideration. In other words, the appeals related to cases pertaining to Co-operative Societies which do not fall in the above mentioned categories.

7. On the first issue with regard to Co-operative Societies and Article 12 of the Constitution, the Hon'ble Supreme Court pointed out that a clear distinction can be drawn between a body which is created by a statute and a body which after having come into existence is governed in accordance with the provisions of a statute and the societies which were subject matter of the appeals were held to fall under the later category, i.e., governed by the Kerala Societies Act and not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act. After referring to several decisions of the Hon'ble Supreme Court, it was held that the said societies which were subject matter of those appeals will not fall within the expression 'State' or 'instrumentally of the State' within the meaning of Article 12 of the Constitution.

8. On the next issue relating to Constitutional provisions and Co-operative autonomy, it was held that co-operative societies are not treated as unit of self Government like Panchayat and Municipalities. The Hon'ble Supreme Court then proceeded to examine the provisions of the Right to Information Act, the effect of words "substantially financed" and the restrictions and limitations, which could be imposed in the larger public interest and held that the co-operative societies registered under the Kerala Co-operative Societies Act will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act.

9. In the light of the above, we have no hesitation to hold that the legal issue arising in these appeals are squarely covered by the decision of the Hon'ble Supreme Court in the case of



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Thalappalam Ser. Coop., Bank Ltd., and Others, (supra). The distinction sought to be drawn by the learned counsel for the respondent stating that the provisions of the RTI Act would be applicable to cases where the Government Officers are appointed to function as Special Officers of the society, when there is no elected Board of Directors, could hardly make any difference in the light of the recent pronouncement of the Hon'ble Supreme Court. The learned counsel appearing for the appellants submitted that for all the societies, elections were conducted and the societies are managed by the elected members.

10. In the light of the above, following the decision of the Hon'ble Supreme Court in the case of Thalappalam Ser. Coop., Bank Ltd., and Others, (supra), these Writ Appeals are allowed and the orders passed in the Writ Petitions are set aside. No costs."

4. Thus, by relying on the above decision, the learned counsel for the petitioner prays this Court to allow this Writ petition by forbearing the respondents 1 and 2 to furnish the information sought for by the third respondent.

5. The learned counsel for the second respondent do not have any serious objection to grant the relief sought for in this writ petition in view of the Judgement of this Court in W.A.Nos.2425 to 2428 and 2500 of 2013, dated 21.04.2015.

6. Having regard to the submissions made by the learned counsel on either side, this Court is of the considered opinion that in view of W.A.Nos.2425 to 2428 and 2500 of 2013, the application made by the third respondent under the Right to Information Act, seeking certain personal information of the members of the petitioner society, is not maintainable as the Co-operative Societies are not created by statute. Therefore, this Writ petition is allowed and the respondents 1 and 2 are restrained from furnishing the personal information relating to the members of the petitioner society to the third respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



vum/rsh

To

1. The Assistant Director of Handloom & Textiles,
No.426, Bhavani Main Raod,
Ashokapuram, Erode.
2. The Public Information Officer,
E.H.75, Thiruvalluvar Weavers Coop,
Production and sales Society,
Sakthi Bhavani Road, Dharmapuri,
Salangapalayam Post - 638 455.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.45761
+1cc to the Government Pleader, S.R.No.45822

W.P.NO.25430 OF 2016

RSI (CO)
PBS/12/10/2021